11-9-2012

Morris v. Hap Taylor & Sons, Inc. Appellant's Reply Brief Dckt. 39747

IN THE SUPREME COURT OF THE STATE OF IDAHO

BENJAMIN MORRIS,	:	
	:	**DOCKET NO. 39747**
Claimant/Appellant,	:	
	:	
vs.	:	
	:	
HAP TAYLOR & SONS, INC., Employer, and LIBERTY NORTHWEST INSURANCE CORP.	:	
	:	
Defendants/Respondents.	:	
	:	

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REPLY BRIEF OF APPELLANT MORRIS

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Appeal from the Industrial Commission of the State of Idaho

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Thomas E. Limbaugh, Chairman

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1. By not requiring compliance with Judicial Rules of Practice & Procedure Rule 18 C (c) the Industrial Commission exceeded its power and authority.

The Industrial Commission as "an administrative agency is a creature of statute, limited to the power and authority granted to it by the Legislature and may not exercise its sub-legislative powers to modify, alter, or enlarge the legislative act which it administers." Simpson v. Louisiana-Pacific Corp., 134 Idaho 209, 112, 998 P.2d 1122, 1126 (2000). The Commission may only exercise that discretion granted by the Legislature. The Legislature's use of the word "shall" denotes a mandatory, not a discretionary, act. Id. at 134 Idaho 112, 134 P.2d at 1125.

Idaho Code § 72-508 precisely sets forth the authority, and limitations, of the Industrial Commission. In relevant part it provides:

> "...the commission shall have authority to promulgate and adopt reasonable rules and regulations for effecting the purpose of this act...the commission shall have authority to promulgate and adopt reasonable rules and regulations involving judicial matters...Rules and regulations as promulgated and adopted, if not inconsistent with the law, shall be binding in the administration of this law."

Pursuant to its rule-making authority the Commission adopted its Judicial Rules & Procedures (JRP&P). In doing so it is bound to follow its JRP&P. By adopting JRP&P Rule 18 the Commission is bound to strictly adhere to its requirements when considering lump sum settlement agreements. The plain language of JRP&P Rule 18 C (c) requires:

> C. "Text of the terms of settlement...shall include: ...
> c. Claimant's current medical and employment status." (Appendix A).

Workers compensation benefits can only be awarded as provided under the statutes and the Commission's rules. *See* Sadiku v. AAtronics Incorporated, 142 Idaho 410, 411, 128 P.3d 947, 948, (2006). The Industrial Commission has no discretion to proceed to approve a proposed settlement that does not comply with the mandatory requirements of JRP&P Rule 18 C (c). *See*

Henry v. Ysursa, 148 Idaho 913, 916, 231 P.3d 1010, 1013 (2008). Unless the Commission finds that all of the requisite textual elements of a lump sum settlement agreement exist, it may not approve the agreement. It is the duty of the Commission to make a full and exhaustive inquiry when counsel overlook an important and material matter. Piersdorff v. Gray's Auto Shop, 58 Idaho 438, 450, 74 P.2d 171 (1937). It is error for the Commission to approve an agreement that clearly fails to contain all of the requisite elements. *See* Wernecke v. St. Maries Joint School District #401, 147 Idaho 277, 286, 207 P.3d 1008, 1017 (2009).

The Industrial Commission tacitly acknowledged that the proposed settlement did not comply with Rule 18 C (c), because its text did not set forth Morris's current medical and employment status. Nonetheless the Commission asserted that its proceeding to approve the proposed settlement, without the mandatory requirements, was not a "critical flaw." R. p. 386. The Commission asserted that its failure to comply with statutory and rule mandatory requirements was excused because its 'benefits file' contained "medical reports" and "rehabilitation reports" and that it was "well aware that Claimant suffered a head injury." R. p. 386. The knowledge that Morris suffered a head injury does not meet the plainly stated requirement that the text of a proposed settlement agreement "shall" state a claimant's current medical and employment status.

The Commission asserted that the purpose of Rule 18 is to "ensure the Commission has information on which a determination can be made." R. P. 386. While one purpose of the mandatory requirements is to provide the Commission with information, it is submitted that another, equally important, purpose is that the injured worker needs to be informed of what the Commission is being told about his or her current medical and employment status when it

considers whether or not the proposed settlement is in his or her best interest. In his December 28, 2009, letter to the Commission, Morris's attorney represented:

> "The Claimant has been released to return to work without significant physical work restrictions. He is exploring vocational options and anticipates utilizing proceeds from the LSS resolution to assist with retraining costs." R. p. 280.

Morris's medical records, and the report of the vocational expert hired to assist the attorney, are dramatically irreconcilable with his attorney's representations to the Commission.

Morris's treating physician's medical records, prior to his attorney's letter to the Commission, that:

1. August 2, 2009, his treating physician, Dr. Stanek—He is still not back to work. He needs Botulinum Toxin to reduce neck and shoulder spasms, to have his vision checked, psychological counseling to address his chronic pain issues, depression, anxiety, and anger, and vocational rehabilitation. R. p. 375-376.
2. November 13, 2009, his treating physician, Dr. Stanek—He needs to stay with his family and be observed over the next three days. He is not to drive for the next three days. He is to follow-up for repeat Botulinum Toxin injections on the 17th. R. p. 377.
3. November 14, 2009, his treating physician, Dr. Stanek—Wrote to Morris's attorney that "The simple fact remains that Ben is still not back to work. My intention was for Ben to be involved in a multidisciplinary program to address his headaches, neck pain, TMJ, deconditioning, assistance with diabetic management, psychological issues including the anger he is experiencing, and nutrition/weight loss…At this point I think that it would be in Ben's best interest to move forward. Ben should work closely with a vocational rehabilitation counselor to determine suitable work situations." R. p. 105.
4. November 25, 2009, his treating physician, Dr. Stanek—He has unresolved TMJ; post concussive syndrome; depression with anxiety; diabetes; chronic neck pain and spasms; chronic headaches; nightmares; and dizziness. He is to be continued on Lexapro and Prevacid and to follow up in one month. R. p. 378.

The vocational expert's report is dated December 15, 2009. R. pp. 200-203. It documented that Morris:

1. Has an ongoing traumatic brain injury with no resolve to the claimant's need for psychological and vocational assistance.

2. Has been found eligible for Social Security Disability benefits. (See also award, R. p. 69)
3. Is eligible for rehabilitation services from the Idaho Division of Vocational Rehabilitation.
4. Cannot return to his time of injury employment nor can he return to employment within his previous heavy-duty employment.
5. Requires a non-stressful sheltered work environment.
6. Needs a sheltered employment placement with a job coach.
7. Needs a work hardening program.

Morris's medical records subsequent to the attorney's letter, and before the Commission approved the LSSA, are consistent with the previous records. On January 15, 2010, his treating physician, Dr. Stanek, referred Morris to the SLRI Pain Clinic for a comprehensive program to *facilitate* helping him return to work. R. p. 236.

Without the mandatory current medical and employment status information being set forth in the text of the proposed settlement, the Commission did not have the required current medical and employment information. The Commission was not compelled by any statutory or rule imposed time constraint to approve the LSSA without the required current information. The Commission had no discretion to disregard the required compliance with JRP&P Rule 18 C (c).[1] Piersdorff v. Gray's Auto Shop, 58 Idaho 438, 450, 74 P.2d 171 (1937). In absence of full compliance with Rule 18 C (c), the Commission lacked the authority to approve the proposed settlement agreement. The Commission's order is void. *See* Wernecke at 147 Idaho 286, 207 P.3d at 1017.

[1] As noted in the Opening Brief, the Commission refused to provide a copy of the "synopsis of the case" prepared for it by a 'Benefits Analyst' at the Commission asserting that it represented "privileged work product." . AR, p. 10. However, a portion of the Benefits Analyst's review process is contained in record provided by the Commission at R. pp. 306-307. It appears from these e-mail communications with Liberty that the only review undertaken by the Analyst occurred on January 13th to 14th, 2010, to verify the correct amount of temporary total disability benefits that had been previously paid to Morris. His review revealed that Liberty overpaid this benefit, for the period of 1-8-08 to 12-1-08, in the sum of $416.06, and Liberty waived the 'overpayment'.

ARGUMENT

2. The representations of Appellant Morris's attorney to the Industrial Commission constitute the degree of fraud necessary to set aside the Commission's approval of the LSSA.

Idaho Code § 72-718 provides:

"A decision of the commission, in the absence of fraud, shall be final and conclusive To all matters adjudicated by the commission upon filing the decision..."

The Commission, citing the Court's decision in Harmon v. Lute's Const. Co., Inc., 112 Idaho 291, 732 P.2d 260 (1986), held that only allegations and proof of fraud on the part of employer's surety in procuring the agreement is sufficient and thus "there is no evidence before us on which we could legitimately rely to support a finding of fraud." R. p. 387 (emphasis in Commission's decision); p. 287.

It is submitted that the Harmon decision is limited to its facts wherein fraud was alleged based upon allegations that the surety's adjuster mislead the claimant. The adoption of such a narrow limitation of fraud is unwarranted. The Commission has previously recognized and held that if the intent of the legislature was to narrowly define words in a statute it will do so within the plain language of the statute. *See* The Industrial Commission v. Oasis Legal Finance, L.L.C., I.C. 2007-028248, pp. 18-26 (January 13, 2012). Appendix B. In Oasis, the Commission addressed the question of whether or not the statutory prohibition of an *assignment of a claim for compensation* set forth in Idaho Code § 72-802 also applied to an '*assignment of compensation.*' The Commission, in a decision that it acknowledged had the effect of eliminating perhaps the only means by which an injured worker "would be able to keep a roof over his head, or put food on the table" during protracted workers' compensation proceedings, held that Idaho Code § 72-802 should not be narrowly limited. It stated:

"had it been the intent of the legislature to narrowly define the word 'claim' to

> only mean the assignment of claimant's chose in action, not to include the proceeds payable as a consequence of the successful prosecution of that claim, then the amendment would have been stated differently, or incorporated elsewhere in the statute." Id. p. 23.

Likewise, had the legislature intended to limit "fraud" to actions perpetrated by the surety, it would have done so with plain wording so stating.

The Commission's proceedings are governed by its own set of procedures regarding pleadings and it is not bound to follow the Idaho Rules of Civil Procedure. However the Commission, as support for its narrow interpretation of "fraud" limiting it to conduct by the surety, cited I.R.C.P. Rule 60 (b) (3), which provides for relief from a judgment for fraud of an adverse party. R. p. 388. Rule 60 (b) (3) is not applicable to an interpretation of the Workers' Compensation Act, especially where the plain wording of the statute enacted by the legislature contains no such limitation.

The Court has consistently held that the Workers' Compensation Act is to be liberally construed in favor of the employee in order to serve the humane purpose for which it was promulgated. Wernecke v. St. Maries Joint School District #401, 147 Idaho 277, 282, 207 P.3d 1008, 1013 (2009). Construing the phrase "in the absence of fraud" to only mean fraud on the perpetrated by the surety does not serve the purpose of Idaho's Workers' Compensation Act to keep an injured worker and the worker's family from becoming destitute because the breadwinner has been injured and cannot work. Williams v. Blue Cross of Idaho, 151 51, 260 P.3d 1186, 1193 (2011). In order to serve the humane purpose of the Act, it does not matter from where the fraud emanated. If limiting the construction of "in the absence of fraud" was the intent of the legislature, it would have so stated in the statute.

Undersigned counsel has not located an opinion of this Court addressing the nature of the conduct necessary to establish the nature of fraud by a client's counsel that is sufficient to hold

that a judgment or settlement contract voidable. Research into the decisions of other jurisdictions revealed that conduct "where the attorney regularly employed corruptly sells out his client's interest to the other side" is conduct sufficiently fraudulent to set aside a judgment. *See* United States v. Throckmorton, 98 U.S. 61, 66, 25 L.Ed 93 (1878); Alexander v. Alexander, 229 S.W.2d 234, 236-239, (Ark. 1950). These decisions discuss that, in cases where an attorney sells out his client's interests and there has not been "a real contest in the trial or hearing of the case," such conduct is sufficient to "annul the former judgment or decree, and open the case for a new and fair hearing." United States v. Throckmorton, 98 U.S. at 66; Alexander v. Alexander, 229 S.W.2d at 236.

Counsel has not been able to locate any elaboration on what constitutes conduct consisting of corruptly selling out his client's interests to the other side. Corruption is defined in *Blacks Law Dictionary*, Revised 4th Edition, as being the act of a fiduciary who wrongfully uses his station to procure some benefit for himself contrary to his duty and the rights of others. *See* Appendix C. The facts in the record support a finding that this occurred in this matter.

Prior to sending his letter in support of his attorney fees to the Commission, Morris's attorney was aware that Morris had qualified for Social Security Disability Benefits. R. p. 240. U.S. Social Security Administration's requirements for a person to receive Disability Benefits are strict.

> "Social Security pays benefits to people who cannot work because they have a medical condition that is expected to last at least one year or result in death...While some programs give money to people with partial disability or short-term disability, Social Security does not." (Appendix D).

Contrary to the attorney's representations to the Commission that Morris was recovered to the extent that he was able to return to work, Morris's counsel was aware that Morris was receiving Social Security Disability Benefits and that he was receiving them because he was not

able to work. The attorney's affidavit, filed in support of his objection to Morris's attempt to have the LSSA set aside, stated that in drafting the LSSA's language he had language inserted to protect the Disability Benefits that Morris was receiving from Social Security. He stated:

> "To help protect against the social security offset, I asked Liberty to include the language in the agreement averaging Claimant's recovery over his lifespan." R. p. 172, ¶ 17.

The LSSA did not inform the Commission, and the Commission did not ask, why the lump sum was apportioned to represent weekly prorated payments. If the Claimant was able to to return to work as he represented to the Commission the obvious question would be, "Why is that necessary?" The attorney's letter to the Commission also did not provide any explanation for the lump sum being prorated and representing weekly payments of $15.73. Neither the LSSA, or the attorney's representations to the Commission, made any mention of the fact that the Social Security Administration had determined, just two months earlier, that Morris was incapable of working and therefore entitled to Disability Benefits. Indeed, such a representation would have been totally inconsistent with the attorney's affirmative representation to the Commission that Morris could return to work without significant physical restrictions.

In the attorney's argument against Morris's request that the Commission set aside the LSSA, he offered no explanation, and the Commission did not require him to provide any explanation, for the inconsistency between his representation that Morris was physically able to return to work and the fact that he was receiving Social Security Disability benefits because he could not work, in need of treatment at a pain clinic to facilitate his return to work, and in need of a sheltered workplace with a job coach. In the memorandum in support of the motion to set aside the LSSA Morris argued to the Commission that, at best, this could only be viewed as constructive fraud on the claimant and the Commission. R. p. 369.

Constructive fraud comprises all acts, omissions and concealment involving a breach of legal or equitable duty, trust or confidence resulting in damage to another. Constructive fraud usually arises from a breach of duty where a relation of trust and confidence exists. Bethalamy v. Bechtel, 91 Idaho 55, 62-62, 415 P. 2d 698, 705-706, (1966). Morris and his attorney's relationship was a fiduciary one. Mitchell v. Barendregt, 120 Idaho 837, 844, 820 P.2d 707, 714 (Idaho App. 1991). When there is a duty to speak because of a fiduciary relationship, a failure to do so is a specie of fraud for which relief may be afforded. McGhee v. McGhee, 82 Idaho 367, 353 P.2d 760 (1960); See Mitchell v. Barendregt, 120 Idaho 837, 820 P.2d 707 (Idaho App. 1991). Morris's attorney had the duty to inform him that not only did he not include the required textual information regarding his current medical and employment status in the LSSA, but also the duty to inform him that he was going to represent to the Commission that he was recovered to the extent that he was able to return to work. The attorney did not inform Morris that he had to make such a representation and that, without such a representation the Commission would in all likelihood not approve such a settlement and his attorney fees. The attorney did not advise Morris that, without such a representation, the Commission would be compelled to conduct an inquiry into the merits of his claim in order to "properly judge whether an injured worker is surrendering a strong claim for too small a settlement." Wernecke v. St. Maries Joint School District #401, supra., quoting Commissioner Maynard, at note 9.

The LSSA, and the attorneys letter in support of his attorney fees, represented to the Commission that Morris's attorney would receive fees and costs of $15,023.00 to be deducted from the settlement proceeds. R. p. 280. They also represent that Morris would receive the net sum of $31,623.03. Morris did not receive that sum. Morris's attorney deducted $1,000.00 from the 'net sum' as reimbursement for an advance that he made to Morris, before the LSSA and the

attorney's letter were submitted, on December 21, 2009. The Commission was not informed about it. R. p. 119. Morris's attorney also deducted another $2,000.00 from the 'net sum', after the LSSA and attorney's letter were submitted, as reimbursement for a second advance that he made to Morris on January 14, 2010. R. p. 120. The actual net sum that Morris received from the settlement proceeds was $27,453.53. The relevant point is not that the attorney advanced Morris money. Morris no doubt needed it to pay for basic living expenses and to get his car repaired. R. p. 175. It is respectfully submitted that the relevant point is that Morris's attorney had requested Liberty to "expedite preparation of the LSS documentation," because Morris was "in need of these settlement funds as soon as possible," and in less than one month's time, he needed $3,000.00 to live on. R. p. 117.

Under the Commission's Workers' Compensation Benefits Table, if he was totally and permanently disabled, Morris would be entitled to receive a minimum of $289.35 per week/$1,157.40 per month. *See* Appendix E. The 'net sum' Morris would receive under the LSSA was roughly the equivalent of two (2) years workers' compensation benefits despite the fact that he was by all contemporaneous indications, in the medical records, in the vocational expert's report, and in Social Security Administration's determination, unable to work at all. At the time that the settlement was approved Morris was thirty-three (33) years old and had a reasonable life expectancy under Social Security Administration's Actuarial Life Table of forty-four (44) years. *See* Appendix F. If Morris was found to be totally and permanently disabled, he would be entitled to receive an $1,157.40 per month for his lifetime and that monthly amount would increase on a yearly basis depending upon the state average weekly wage.

It is the Commission's responsibility to ensure that a proposed settlement is in the best interest of the injured worker. Idaho Code § 72-404. "This is a responsibility that the

Commission must scrupulously honor." Wernecke v. St. Maries Joint Sch. Dist. #401, 147 Idaho 277, 286, 207 P.3d 1008, 1017 (2009). While the Commission had general knowledge that Morris suffered a "head injury" and that "the LSSA left medical benefits open" it did not have the necessary, and required, information regarding his current medical and employment status. Without this information the Commission did not have sufficient information to consider the LSSA. R. p. 386. If the Commission had been provided, and required that it be provided the mandatory information in the text of the proposed settlement agreement, it would have realized that Morris was not able to return to work, that he needed treatment at a pain clinic to facilitate his possible return to work, and that he needed two advances from his attorney to live on within the one month period of time immediately prior to its consideration of the LSSA, the Commission, in exercising its responsibility to scrupulously ensure that the settlement was in Morris's best interest, would have had to reject the notion that the $15.73 per week/$62.92 per month allocation, of the one lump sum he would receive, would be sufficient to keep Morris and his family from becoming destitute.

It is respectfully submitted that the attorney's action in affirmatively misrepresenting that Morris was physically able to return to work, when he did not include such a representation in the terms of the LSSA or provide Morris with a copy of, or inform Morris of, his representations to the Commission, constitutes the degree of corrupt selling out of his client's interest sufficient to hold the Commission's approval of the LSSA is void.

ARGUMENT

3. The Commission erred in failing to provide Morris a hearing on the issue of fraud.

The Commission held that "there is no evidence before us on which we could legitimately rely to support a finding of fraud" because it erred in limiting "fraud" to acts

perpetrated by the surety and as a result it *sub silentio* denied Morris's request for a hearing on the issue. R. p. 287. The Commission's pleading procedures are set forth in Rule 3 of the Judicial Rules of Practice & Procedure. Appendix G. They are similar to other administrative agency rules in that regard. Rule 3 does not require fraud to be pled with particularity. The Commission's rules do not establish any standard necessary to be set forth, by affidavit or testimony, to assert a claim of fraud for the purpose of obtaining a full hearing. *See* Staff of the Idaho Real Estate Commission v. Nordling, 135 Idaho 630, 635, 22 P.3d 105, 110. (2001). In the two reported decisions where this Court had occasion to address appeals from the Commission that involved allegations of fraud the decisions reflect that the Commission held a hearing to fully vet the fraud allegations. See Harmon v. Lutes Construction Company, Inc., 112 Idaho 291, 732 P. 2d 260 (1986); Sadiku v. AAtronics Incorporated, 142 Idaho 410, 128 P.3d 947 (2006).

At hearing Morris would have the burden of proving all the elements of constructive fraud by clear and convincing evidence. Harmon v. Lute's Construction Company, Inc., 112 Idaho 291, 293, 732 P.2d 260, 263 (1986). However, at the motion stage seeking to obtain a hearing, Morris was not required to prove each element by clear and convincing evidence. Staff of the Idaho Real Estate Commission v. Norling, 135 Idaho 630, 635, 22 P.3d 105, 110 (2001).

The Commission further attempted to support its denial of a hearing by stating that Morris "is free to seek recourse as it may be available to him in some other venue [civil suit], but the Industrial Commission does not have jurisdiction to address those issues." R. p. 388. The Commission's refusal to provide a timely hearing and requiring him to pursue his remedy through civil litigation is contrary the legislative intent that the workers' compensation law provide sure and certain relief for injured workers and their families. Idaho State Insurance Fund

v. Van Tine, 132 Idaho 902, 911, 980 P.2d 566, 574 (1999). Morris is not seeking damages against his attorney in this proceeding. If, after a hearing, the Commission determines that Morris has presented clear and convincing evidence that the attorney's actions constitute constructive fraud, he will not have suffered substantial damage that would require him to consider proceeding through a complicated, expensive, and time consuming a civil lawsuit. The legislature intended that the workers' compensation act "give injured workmen a speedy, summary, and simple remedy for the recovery of compensation in all cases coming within its provisions." Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 450, 74 P.2d 171 (1937). Morris is asking the Commission to review and clarify his rights under the Workers' Compensation Act and it is in his best interest that he not be subjected to civil litigation to resolve his workers' compensation rights. *See* Williams v. Blue Cross of Idaho, 151 Idaho 51, 54, 55, 260 P.3d 1186, 1189, 1191 (2011). The legislature intended that the workers' compensation act "give injured workmen a speedy, summary, and simple remedy for the recovery of compensation in all cases coming within its provisions." Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 450, 74 P.2d 171 (1937). The Commission's determination, requiring Morris to pursue a civil suit to seek redress, in a matter that is fully capable of being resolved through the Commission's hearing process, does not conform with the legislature's intent that an injured worker's remedy be speedy, summary in nature, and simple.

CONCLUSION

The judgment of the Industrial Commission should be held void and this matter remanded to the Industrial Commission due to the Commission's failure to comply with JRP&P Rule 18 C (c). In the alternative, the judgment of the Industrial Commission should be held void and this matter remanded for a hearing on the issue of fraud.

Respectfully submitted this 7th day of November, 2012.

Starr Kelso, Attorney for Appellant Morris

CERTIFICATE OF SERVICE:

I hereby certify that two copies of the foregoing Reply Brief were mailed on the 7th day of November, 2012, by regular U.S. Mail with postage prepaid thereon, to the attorney for Respondent as follows:

Kent W. Day
Attorney at Law
P.O. Box 6358
Boise, Idaho 83707-6358

Starr Kelso

APPENDIX

APPENDIX

RULE 18.

LUMP SUM SETTLEMENT AGREEMENTS

A. Service, Form.

Documents necessary to finalize settlement under this rule shall be filed and a copy served on the other parties. The text of a settlement agreement shall be on 8.5" X 11" paper and shall identify the attorney or party that prepared it.

B. Standard of Review.

Prior to approving a lump sum settlement, the Commission will review a proposed lump sum settlement to determine whether such settlement is in the best interests of all parties. Supporting documents shall be complete, accurate, legible, and arranged in chronological order with the earliest date proceeding to the most recent date without duplicate submissions.

C. Requirements.

To ensure the Commission has information on which a determination can be made, the Commission requires the parties to submit the following information and serve a copy on each of the parties:

1. Text of the terms of settlement, which shall include:

    a. The parties' names,

    b. Industrial Commission claim number(s),

    c. Claimant's current medical and employment status,

    d. A list of all medical providers paid, grouped within categories which are "physician," "hospital," "therapy," "mileage," "miscellaneous,"

    e. An itemized summary of benefits paid and those to be paid,

    f. Outstanding and unpaid medical expenses, if any,

    g. Method of calculating benefits and supporting data, including key medical records,

    h. Signature of the claimant and the signatures of all other parties, or the authorized agents of the other parties, to the agreement,

i. An itemization of any and all fees and costs charged by claimant's counsel prior to the submission of the agreement and an itemization of fees and costs to be deducted from the lump sum payment or payments, and

j. A copy of the attorney fee agreement between claimant and counsel for claimant.

2. Attorney fee letters as set forth in IDAPA 17.02.05.281.

3. An affirmative statement that the agreement is in the best interests of the parties, pursuant to Idaho Code § 72-404.

D. Effect of Submission and Hearings.

The submission of a proposed lump sum settlement or agreement shall not be considered a motion. If the Commission declines to approve a proposed lump sum settlement agreement, the Commission may request additional relevant information, or on its own motion or on the motion of a party to the agreement schedule a hearing limited to the issue of whether the lump sum settlement and discharge of one or more defendants is for the best interest of all parties. There is no appeal from the Commission's decision.

E. Format.

The information required under Section C of this rule shall be submitted in a format substantially similar to the form provided in Appendix 6A and B.

COMMENT: *Paragraph D reflects the administrative process in reviewing proposed lump sum settlement agreements. If not initially approved, the parties may still submit additional information for consideration by the Commission. Also, an administrative hearing is available to the parties for presentation of relevant information for the Commission to consider in reviewing the lump sum settlement proposal.*

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

THE INDUSTRIAL COMMISSION v. OASIS LEGAL FINANCE, L.L.C., Real Party in Interest, Defendant.	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON ORDER TO SHOW CAUSE**
BRET TYLINSKI, Claimant, v. GUERDON ENTERPRISES, L.L.C., Employer, and STATE INSURANCE FUND, Surety, Defendants.	Filed January 13, 2012 IC: 2007-028248 1998-038640 2005-506894 2007-024933
JONATHON GOULD, Claimant, v. ORMOND BUILDERS, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants.	IC: 2008-017154

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TERRY DENNY, Claimant, v. URS, Employer, and INSURANCE CO. OF THE STATE OF PENNSYLVANIA, Surety, Defendants.	)	IC: 2009-017004

INTRODUCTION

By Order dated January 26, 2011, Oasis Legal Finance, L.L.C., ("Oasis") was ordered to show cause why certain legal funding contracts between Oasis, and two Idaho Workers' Compensation Claimants, Bret Tylinski and Jonathan Gould, should not be found to be invalid under the Idaho Workers' Compensation laws. Subsequent thereto, the Commission was presented with a proposed lump sum settlement in the case of *Terry Denny v. URS*, for review and approval. That agreement anticipated a payment from the proceeds of the lump sum settlement to Oasis, in satisfaction of another legal funding contract. The Industrial Commission consolidated the three matters for the purposes of a show cause proceeding held on November 3, 2011 at Boise, Idaho. Present for Oasis was R. Daniel Bowen, Esq., of Boise, Idaho, and William M. McErlean, Esq., of Chicago, Illinois. At hearing, the testimony of Lisa Foreman, General Counsel for Oasis, was taken. Oasis offered Exhibits 1 – 15, which were admitted into evidence. The prehearing deposition of James Arnold was also admitted into evidence. In

R 7 2 9

addition to the foregoing, the Commission takes judicial notice of its own legal files on each of the three matters consolidated for purposes of the show cause proceeding.

Oasis submitted a post-hearing brief and the matter came under advisement on December 5, 2011. Being fully apprised in the law and the premises, the Commission issues the following decision regarding the applicability of the provisions of I.C. § 72-802 to the Oasis purchase agreements.

FINDINGS OF FACT

Gould v. Ormond Builders, Inc.

1. Jonathan Gould suffered a work related injury on or about May 22, 2008. His timely claim was accepted by Surety, and workers' compensation benefits were paid to Claimant, or on his behalf, for the effects of the injury. The parties disputed the extent and degree of both Claimant's impairment and disability in excess of impairment. These and other disputes were resolved via a lump sum settlement approved by the Industrial Commission on or about September 2, 2010. Pursuant to the terms of that agreement, it was anticipated that Claimant would receive $32,391.50 lump sum consideration. The Commission approved attorney's fees in amount of $8,097.88, and costs in the amount of $1,000.00. Per the terms of the agreement, it was anticipated that Claimant would net $23,293.62 after the payment of attorney's fees and costs. On or about September 9, 2010, the Industrial Commission was contacted by Claimant who had questions about additional funds withheld from the settlement. An inquiry from the Industrial Commission revealed that following approval of the lump sum settlement agreement, Surety contacted the Idaho Department of Health and Welfare to ascertain whether or not a child support withholding order was in effect. Upon being advised of the settlement, the Department of Health and Welfare immediately issued a withholding order and

delivered the same to Surety. Surety deducted the sum of $11,646.81 from the settlement amount for payment to the Department of Health and Welfare in satisfaction of the withholding order. Surety then forwarded a check in the amount of $20,744.69, ($32,391.50 - $11,646.81) to Claimant's counsel.

2. The Commission also learned that an additional payment had been made directly from counsel's client trust account to an entity identified as Oasis Legal Finance, L.L.C., in the amount of $7,461.00. Claimant's counsel explained that this payment was made to satisfy Claimant's obligation under the terms of an agreement he had previously made with Oasis. After deductions for costs and attorney's fees approved by the Commission, the valid child support order, and the payment to Oasis, Claimant netted $4,185.81 from the original settlement of $32,391.50.

3. At the request of the Commission, counsel provided the Commission with a copy of an Oasis "Purchase Agreement" executed by Claimant on June 16, 2009, pursuant to the terms of which he received the immediate payment of $3,650.00. The agreement describes the transaction as follows:

> Seller [Gould] sells all of Seller's interest in and to the Purchased Interest to Purchaser [Oasis], and Purchaser purchases the Purchased Interest from Seller on the terms and conditions provided in this Purchase Agreement. The purchase of the Purchased Interest shall entitle Purchaser to receive the Oasis Ownership Amount . . . As consideration for the sale of the Purchased Interest, Purchasers shall pay the Purchase Price to Seller. . ."

Oasis Ex. 8, p. 55.

4. The terms "Purchased Interest" and "Oasis Ownership Amount," are defined as follows:

> "Oasis Ownership Amount" is the amount Purchaser is to be paid out of the Proceeds and as determined as of the date Purchaser receives payment based on the Payment Schedule on Page 1 of this Purchase Agreement.

. . .

> "Purchased Interest" means the right to receive a portion of the Proceeds equal to the Oasis Ownership Amount on the further terms and conditions provided for in this Purchase Agreement.

§§ 1.2 and 1.4, Oasis Ex. 8, p. 56.

Therefore, the interest that Oasis purchased for the sum of $3,650.00 is its right to recover from the proceeds of the workers' compensation case the "Oasis Ownership Amount," an amount which equals the original purchase price plus an additional amount that increases with the passage of time. Per the Gould agreement, the Oasis ownership amount payable to Oasis at any particular time is described in the payment schedule:

Oasis Ownership Amount

Payment Schedule	Oasis Ownership Amount: (Payoff Amount)
June 16, 2009 to December 15, 2009	$5,475.00
December 16, 2009 to June 15, 2010	$6,022.50
June 16, 2010 to September 15, 2010	$8,212.50
September 16, 2010 to December 15, 2010	$9,125.00
December 16, 2010 to June 15, 2011	$10,057.50
June 16, 2011 to December 15, 2011	$11,862.50
December 16, 2011 and thereafter	$12,775.00
Fees Due at Repayment:	
Case Servicing Fee every 6 months	$20.00
Subsequent Case Review for each additional funding	$20.00
Facsimile and Photocopying Costs per Funding	$ 9.00

Oasis Ex. 8, p. 55

5. The purchase agreement further specifies that the Oasis ownership amount shall be determined as of the date Oasis receives payment in full from or on behalf of seller. Importantly, the agreement specifies that seller is not entitled to receive any proceeds from the workers' compensation claimant until Oasis has received the Oasis ownership amount. (See,

Oasis Ex. 8, p. 58). To this end, Oasis required both Gould, and his attorney, to execute an "irrevocable letter of direction" contemporaneous with the execution of the purchase agreement. Pursuant to the terms of irrevocable letter of direction, both Claimant and his attorney acknowledge and agree that the Oasis ownership amount is to be paid from the proceeds of any settlement of the workers' compensation claim before any funds are released to Claimant. The letter further anticipates that any settlement monies paid by Employer/Surety will be paid by check to Claimant's attorney, and that all disbursements of funds will be made through the attorney's client trust account. (*See*, Oasis Ex. 10, p. 64).

6. The purchase agreement also makes it clear that in the event Gould takes nothing on his underlying worker's compensation claim, he has no obligation to pay the Oasis ownership amount.

7. Notwithstanding that the payment schedule for the Oasis ownership amount bears some similarities to the repayment of the principal amount of a loan, plus interest thereon, the agreement goes to some length to dispel any notion that the transaction should be construed as a loan versus a purchase and sale:

> Risk of Loss; No Loan Transaction. The purchase of the Purchased Interest and the other transactions contemplated by this Purchase Agreement involve a substantial economic risk and a bona fide risk of loss to Purchaser. The Oasis Ownership Amount has been negotiated to account for such risk. The sale of the Purchased Interest is an absolute sale and not a loan secured by a collateral assignment of the Purchased Interest.
>
> . . .
>
> Treatment of Transaction. Seller agrees to treat and report this sale and purchase of the Purchased Interest as a sale transaction and not as a loan for all purposes (including tax purposes).
>
> . . .

> Treatment in Bankruptcy. If Seller commences or has commenced against it any case or other proceeding pursuant to any bankruptcy, insolvency or similar law prior to payment of the full Oasis Ownership Amount to Purchaser, Seller shall cause the Purchased Interest to be described as an asset of Purchaser (and not as a debt obligation of Seller) in any oral or written communications, including, without limitation, any schedule or other document filed in connection with such case or proceeding.

§§ 3.1, 5.1, 5.2, Oasis Ex. 8, p. 57.

8. As of the date of settlement of the underlying workers' compensation claim, the payment schedule specifies that Oasis was entitled to collect the sum of $8,212.50. However, through the efforts of Claimant's counsel, and with the agreement of Oasis, that sum was reduced to $7,461.00.

9. On learning of the existence of the purchase agreement, and in view of the direct payment to Oasis from counsel's client trust account in the amount of $7,461.00 from the proceeds of the lump sum settlement, the Commission filed its timely notice of reconsideration of the lump sum settlement agreement pursuant to the provisions of I.C. § 72-718. Under that section, the Commission is empowered to reconsider its decision to approve the lump sum settlement agreement on its own initiative. Reconsideration of the approval of the settlement was thought necessary because of concerns over the legality of the payment to Oasis under the provisions of I.C. § 72-802.

10. Following notice to the parties, the Commission held a hearing in Idaho Falls on November 30, 2010, for the purpose of obtaining additional information concerning the nature of Claimant's agreement with Oasis, Mr. Wetzel's involvement in the transaction, and the manner of the disbursement of funds. A copy of the transcript of those proceedings has been offered into evidence as Oasis Exhibit 2.

11. Many of the Commission's concerns over the legality of the $7,461.00 payment could not be adequately addressed by the parties in attendance at the November 30, 2010 hearing. In furtherance of its duties to administer the Idaho Workers' Compensation laws, and pursuant to I.C. § 72-714(3), the Commission is empowered to make such inquiries and investigations as may be necessary to assure the proper administration of the Workers' Compensation laws of this state. The Commission ordered Oasis to appear and show cause why the Commission should not enter an order finding that the payment made from counsel's client trust account in satisfaction of the June 16, 2009 purchase agreement is illegal under the Workers' Compensation laws of this state, and further requiring Oasis to return the sum of $7,461.00 to Claimant.

Tylinski v. Guerdon Enterprises

12. On or about August 10, 2007, Bret Tylinski suffered an accident/injury arising out of and in the course of his employment. The claim was accepted by the Workers' Compensation Surety, and benefits were paid to Tylinksi, or on his behalf.

13. As did Gould, Tylinksi sold the right to a portion of the proceeds of his workers' compensation settlement to Oasis. Tylinki's case, however, involves two purchase agreements. The first agreement was made on or about December 20, 2008, pursuant to the terms of which Tylinksi agreed to sell his interest in a portion of the proceeds of any subsequent recovery on his workers' compensation claim to Oasis for the sum of $1,050.00. The Oasis ownership amounts and the payment schedule differed from the payment schedule at issue in Gould, because of the lower purchase price. In connection with the December 20, 2008 purchase agreement, the following payment schedule applies:

Oasis Ownership Amount

Payment Schedule	Oasis Ownership Amount (Payoff Amount)
December 19, 2008 to June 18, 2009	$1,575.00
June 19, 2009 to December 18, 2009	$1,732.50
December 19, 2009 to March 18, 2010	$2,362.50
March 19, 2010 to June 18, 2010	$2,625.00
June 19, 2010 to December 18, 2010	$2,887.50
December 19, 2010 to June 18, 2011	$3,412.50
June 19, 2011 and thereafter	$3,675.00

Oasis Ex. 3, p 36.

14. On or about January 5, 2009, Tylinksi entered into a second purchase agreement with Oasis, under the terms of which Claimant received $550.00 consideration from Oasis in exchange for Oasis' purchase of an interest in the proceeds of any subsequent workers' compensation settlement. The payment schedule for the Oasis ownership amount for this purchase is set forth in the agreement as follows:

Oasis Ownership Amount

Payment Schedule	Oasis Ownership Amount (Payoff Amount)
December 31, 2008 to June 29, 2009	$825.00
June 30, 2009 to December 30, 2009	$907.50
December 31, 2009 to March 30, 2010	$1,237.50
March 31, 2010 to June 29, 2010	$1,375.00
June 30, 2010 to December 30, 2010	$1,512.50
December 31, 2010 to June 29, 2011	$1,787.50
June 30, 2011 and thereafter	$1,925.00

Oasis Ex. 6, p. 46.

15. The purchase agreements at issue in the Tylinski matter are substantially similar to the agreement at issue in Gould. However, the Gould agreement contains the following provision:

> **No Assignment.** The parties agree and affirm that this contract does not represent an assignment of workers compensation benefits as defined under state law.

See, § 6.6, Oasis Ex. 8, p. 59.

The Tylinski agreements are bereft of this "no assignment" language.

16. As did Gould, Tylinski and his attorney executed two irrevocable letters of direction.

17. On or about November 5, 2010, Tylinski submitted a proposed lump sum settlement agreement for review and approval by the Industrial Commission, under the terms of which Tylinski would receive $18,000.00 in settlement of his claims. After deduction of attorney's fees and costs of suit, Claimant was expected to net $11,226.00.

18. Although not disclosed in the lump sum settlement agreement, the Memorandum of Attorney's Fees and Costs submitted by Claimant's counsel reveals that counsel expected to pay, from the proceeds of the lump sum settlement, the sum of $4,945.00 to Oasis. On or about December 9, 2010, the Commission entered its order approving the lump sum settlement in part, but requiring Claimant's counsel to retain the sum of $5,220.00 from the proceeds of the settlement, representing the amount that would be payable to Oasis if paid subsequent to January 6, 2011, but prior to June 19, 2011. Counsel was ordered to hold this sum in trust, pending further order from the Commission on the validity of the contract between Tylinski and Oasis.

Terry Denny v. URS

19. At all times relevant hereto, Terry Denny was employed by URS. On June 29 or June 30, 2009, Denny suffered an accident/injury arising out of and in the course of his employment with Employer. The claim was accepted by Employer/Surety, and workers' compensation benefits were paid to Denny or on his behalf.

20. On or about September 9, 2010, Denny entered into a purchase agreement with Oasis, under the terms of which he was paid the sum of $5,150.00 in consideration of Oasis'

receipt of an interest in the proceeds of any future recovery made by Denny in connection with his worker's compensation claim. The purchase agreement specifies the following payment schedule of the Oasis ownership amount:

Oasis Ownership Amount

Payment Schedule	Oasis Ownership Amount (Payoff Amount)
September 9, 2010 to March 8, 2011	$7,725.00
March 9, 2011 to September 8, 2011	$8,497.50
September 9, 2011 to December 8, 2011	$11,587.50
December 9, 2011 to March 8, 2012	$12,875.00
March 9, 2012 to September 8, 2012	$14,162.50
September 9, 2012 to March 8, 2013	$16,737.50
March 9, 2013 and thereafter	$18,025.00
Fees Due at Payment	
Case Servicing Fee every 6 months	$30
Subsequent Case Review for each additional funding	$20
Facsimile and Photocopying Costs per Funding	$25

21. The terms of the Denny purchase agreement are substantially similar to those at issue in both the Gould and Tylinski transactions. However, the Denny "no assignment" language differs slightly from the language used in the Gould contract. In this regard, the Denny agreement specifies:

> **No Assignment of Workers Compensation Benefits.** The Parties agree and affirm that this contract does not represent an assignment as defined under state law.

§ 5.8, Denny Purchase Agreement.

22. On or about April 8, 2011, Denny and Employer/Surety presented a proposed lump sum settlement to the Commission for review and approval, under the terms of which Claimant would receive $20,000.00 new money. The explanatory attorney fee letter submitted by Fred Lewis, Claimant's counsel, reflects that as of April 18, 2011, the Oasis ownership amount was approximately $7,800.00. By Order filed April 25, 2011, the Industrial Commission

approved the proposed lump sum settlement agreement, except that the Commission ordered counsel to hold the sum of $7,724.25, representing the Oasis ownership amount, in trust, pending the Commission's determination of the validity of the purchase agreement between Denny and Oasis.

23. Following the issuance of the Industrial Commission's January 26, 2011 Order to Show Cause in the Gould matter, the Commission entered its May 18, 2011 Order consolidating the Tylinski, Gould and Denny matters for purposes of the Order to Show Cause hearing.

24. Preparatory to hearing, the hearing testimony of James Arnold was taken by way of prehearing deposition.

25. James Arnold is an attorney practicing in eastern Idaho. His practice involves primarily the representation of injured workers before the Idaho Industrial Commission.

26. He testified that approximately five years ago he became aware of the existence of Oasis, and other legal financing companies whose business model involved the "loan of monies to injured workers against the anticipated recovery in a personal injury or workers' compensation action." He testified that he was initially very leery of these companies since the money "loaned" to the injured worker was very expensive. However, he testified that as his experience with Oasis increased, he found the company easy to work with, and willing to negotiate what the company would accept in satisfaction of the Oasis ownership amount. Mr. Arnold testified that because of the expensive nature of the Oasis money, he attempts to persuade clients to utilize Oasis' services only as a last resort, i.e. after his clients have exhausted more conventional, and cheaper, loan opportunities.

27. Mr. Arnold testified that he has no business relationship with Oasis, and that he has never received a client referral from Oasis.

28. Mr. Arnold testified that Oasis does vet the cases of injured workers who offer to sell an interest in the proceeds of their workers' compensation claim to Oasis. He testified that Oasis is ordinarily reluctant to provide money in cases where liability is disputed. However, he noted that in the cases where this has become an issue, he has persuaded Oasis to complete the transaction because of his representations about the strength of a particular case. He stated that as he developed a relationship with Oasis, the vetting of cases with Oasis became easier as the company developed confidence in Mr. Arnold's ability to evaluate cases.

29. Finally, Mr. Arnold testified that in spite of the expensive nature of the Oasis money, the company fills a real need in the Idaho Workers' Compensation system. Where $3,000 or $5,000 means the difference between being evicted from one's apartment, or missing a mortgage payment, during the pendency of a workers' compensation claim, it is worth obtaining money from Oasis, when all other resources have been exhausted.

30. Lisa Foreman is General Counsel for Oasis. She is licensed to practice law in the state of Illinois, and has been employed by Oasis since September 2005. Her job responsibilities include oversight of litigation in which the company is involved. As well, she assists with the company's regulatory initiatives nationwide. She testified that the business model utilized to purchase interests in the proceeds of workers' compensation claims is used in 45 states inclusive of Idaho. In five states, Oasis has either chosen not to do business, or is prohibited from following this business model by applicable law.

31. Ms. Foreman testified that the Oasis purchase agreement was drafted so as not to conflict with non-assignment statutes similar to I.C. § 72-802. Specifically, she testified that although the purchase agreement may involve an "assignment," the assignment anticipated by the agreement is <u>not</u> the prohibited assignment of a workers' compensation "claim." Rather, per

Ms. Foreman, the purchase agreement anticipates the assignment of a contingent interest in the proceeds of a workers' compensation settlement. If the purchase agreement was intended to effectuate the assignment of the injured worker's claim, then one would expect Oasis to be the only entity which could prosecute the claim following the assignment. Clearly, the purchase agreement does not anticipate that anyone but claimant can prosecute the claim. The only assignment which Ms. Foreman would concede might be anticipated by the language of the purchase agreement is the assignment of a contingent interest in the proceeds of the workers' compensation settlement. Per Oasis, when it comes to applying the language of I.C. § 72-802, there is a real and significant difference between the assignment of a workers' compensation claim, and the assignment of the proceeds of a workers' compensation claim. The former is prohibited, the latter is not.

32. Although the purchase agreement bears some similarities to a loan transaction, neither would Ms. Foreman concede that the agreement should be treated as a loan. In the main, her argument is that a true loan creates an obligation for the repayment of a debt certain, whereas the Oasis purchase agreement creates an obligation only upon the occurrence of certain contingencies, including, *inter alia*, claimant's receipt of an award or settlement of some type following the prosecution or settlement of his claim

33. For the same reason, Ms. Foreman argued that neither does the Oasis purchase agreement create a creditor/debtor relationship. Importantly, however, Ms. Foreman acknowledged that at some point in the course of an Oasis transaction with an injured worker, the relationship might mature into one of a creditor and a debtor. If a settlement is obtained, and if there is money remaining in the attorney's client trust account following the payment of

medical bills and attorney's fees, then Oasis may become a creditor with respect to the proceeds of settlement owed to Oasis per the purchase agreement. (See, Hr. Tr., 16/18-18/14).

34. Confirming Mr. Arnold's testimony, Ms. Foreman acknowledged that the Oasis money is "expensive," but that Oasis purchase agreements fill a need that goes largely unfilled among a sizeable minority of the population of workers' compensation claimants; without Oasis type purchase agreements, such claimants would be unable to bridge the financial abyss that lies between the curtailment of workers' compensation benefits and the resolution of the workers' compensation claim. Ms. Foreman explained that Oasis is not as draconian as might be suggested by the repayment schedules described above. Oasis frequently agrees to a reduction of the repayment amount depending on the facts and circumstances of a particular case.

35. During the pendency of the Commission's consideration of this matter, Oasis has agreed to freeze the payment schedule for each of the three cases at issue in this proceeding.

ISSUES

The following matters are at issue:

1. Whether there is an actual controversy which warrants the Commission's review of the application of I.C. § 72-802 to the Oasis contracts;

2. Whether the Industrial Commission has jurisdiction to consider the legality of the Oasis purchase agreements under I.C. § 72-802;

3. Whether the Oasis purchase agreements violated the provision of I.C. § 72-802:

   a. Whether the Oasis purchase agreement is a prohibited assignment of a workers' compensation claim;

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b. Whether Oasis is a "creditor," and if so, whether the settlement amounts paid following the approval of the lump sum settlement agreements at issue constitute "compensation" not subject to the claim of a creditor.

DISCUSSION AND FURTHER FINDINGS

I.

1. As Oasis has noted, the record is bereft of evidence that any of the Claimants in this consolidated proceeding take the position that Oasis is not entitled to recover the Oasis ownership amount following the settlement of their respective workers' compensation claims. Indeed, although it was Mr. Gould's inquiry concerning the propriety of the payment of the Oasis ownership amount from his attorney's client trust account that alerted the Commission to these practices and initiated the instant inquiry, Mr. Gould testified that although he and his attorney considered whether to dispute the Oasis claim to a portion of the proceeds of settlement, he ultimately decided that the indebtedness he had voluntarily incurred should be paid. Mr. Gould testified that even if the settlement proceeds in question had been paid directly to him, and contrary to the irrevocable letter of direction, he would nevertheless pay Oasis what he owed. Although it can be supposed that one or more of the Claimants in these matters might find a use for the monies that are in dispute, none of the Claimants have voiced opposition to the agreements they executed. However, we do not feel that in the absence of a challenge to the provisions of the purchase agreement by one or more of the Claimants, we are prohibited from considering whether or not the Oasis purchase agreements are invalid under I.C. § 72-802.

2. First, these matters arise under the statutory responsibilities created by I.C. § 72-404. In full, that section provides:

> Lump sum payments. Whenever the commission determines that it is for the best interest of all parties, the liability of the employer for compensation may, on

application to the commission by any party interested, be discharged in whole or in part by the payment of one or more lump sums to be determined, with the approval of the commission.

3. Therefore, it matters not that the parties have provisionally settled their disputes unless the Commission, too, can be satisfied that the settlements are in the best interest of the parties. The fact that none of the Claimants in these proceedings have seen fit to challenge the propriety of the Oasis purchase agreements informs, but does not govern, the Commission's inquiry into whether or not these settlements are in the best interest of the parties. Indeed, were we to adopt Oasis' reasoning, the Commission would never be able to consider whether or not a proposed settlement is in the best interest of the parties since the parties, having provisionally settled their disputes, can no longer be said to have matters in controversy.

4. In summary, I.C. § 72-404 vests the Commission with the responsibility to ascertain whether the proposed lump sum settlements are in the best interest of the parties. Part and parcel of that determination is the Commission's assessment of whether or not the provisions of I.C. § 72-802 bar Oasis from access to the proceeds of settlement. In each of the three cases referenced above, the Commission still has before it for consideration whether the lump sum settlement agreement should be approved. Therefore, notwithstanding that the parties are in apparent agreement concerning the disposition of the proceeds of settlement, the Commission's inquiries concerning the proposed settlement are not only appropriate, but required.

II.

5. Oasis also challenges the Industrial Commission's jurisdiction to review the propriety of the purchase agreements between Oasis and the Claimants, and each of them. Under I.C. § 72-707, the Commission has jurisdiction to consider all questions arising under the Workers' Compensation laws of this state. *See, Williams v. Blue Cross of Idaho*, 2011 Idaho

126, 260 P.3d 1186 (2011); *Van Tine v. Idaho State Insurance Fund*, 126 Idaho 688, 889 P.2d 717 (1994); *Owsley v. Idaho Industrial Commission*, 141 Idaho 129, 106 P.3d 455 (2005). Per I.C. § 72-404, the Commission has the responsibility to approve lump sum settlement agreements and, in so doing, must determine that the settlement is in the best interest of the parties. It necessarily follows that the Commission has jurisdiction to clarify claimant's rights under the lump sum settlement agreement that is presented to the Commission for approval. *See, Williams v. Blue Cross of Idaho, supra.* It is also worth noting that the statutory provision which may invalidate the Oasis purchase agreement is a statute specific to the Workers' Compensation laws, and the Commission clearly has jurisdiction to consider whether one of the provisions of the statutory scheme it administers affects Oasis' claim to the proceeds of a workers' compensation settlement.

6. For these reasons, the Commission rejects Oasis' assertion that it does not have jurisdiction over the subject matter of this dispute. The questions before the Commission are clearly questions arising under the Workers' Compensation laws of this state.

III.

I.C. § 72-802 provides:

> Compensation not assignable -- Exempt from execution. No claims for compensation under this law, including compensation payable to a resident of this state under the worker's compensation laws of any other state, shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors, except the restrictions under this section shall not apply to enforcement of an order of any court for the support of any person by execution, garnishment or wage withholding under chapter 12, title 7, Idaho Code.

7. This statute, and similar provisions found under the laws of other states, appears, at first blush, to bar two types of actions. First, the statute prohibits the assignment of claims. Second, the statute prohibits the claims of creditors against compensation and claims therefor.

With respect to the statutory prohibition against the assignment of claims, Oasis acknowledges that an assignment took place. However, it argues that the assignment was not a prohibited assignment of a claim. Rather, the assignment made by each of the three Claimants to Oasis is of a non-prohibited type; the assignment made by the Claimants was of a contingent right to the proceeds of a workers' compensation settlement. Oasis argues that had the Idaho legislature intended to prohibit this type of assignment, the statute would have so stated. In other words, the legislature would have prohibited not only the assignment of "claims for compensation," but also the assignment of "compensation." This argument, according to Oasis, finds its best support in the fact that the prohibition applicable to creditors applies not only to "claims for compensation," but to "compensation" as well. The argument is that the legislature clearly appreciated a distinction between compensation and claims therefor in connection with the prohibition against the claims of creditors, and it must therefore be presumed that it understood the significance of prohibiting the assignment of only "claims for compensation," instead of "claims for compensation" and "compensation." This argument has found good traction in several jurisdictions.

8. In *Kentucky Employers' Mutual Insurance v. Novation Capital, LLC*, 2011 W.L. 832316 (Ky. Ct. App. February 25, 2011) claimant entered into a settlement of his workers' compensation case under the terms of which he would receive $400 per week for 70 weeks, one lump sum payment of $150,000 and $486 for 520 weeks. Thereafter, claimant entered into an agreement with Novation Capital, pursuant to the terms of which claimant assigned his right to the proceeds of his structured settlement in exchange for a lump sum of $112,952.

The workers' compensation surety objected to the agreement, arguing that it violated the anti-assignment provisions of the Kentucky Workers' Compensation laws, which provided in pertinent part:

> [n]o claim for compensation under this chapter shall be assignable, except court or administratively ordered child support pursuant to KRS 403.212. All compensation and claims therefor, except child support obligations, shall be exempt from all claims of creditors.

Noting the general rule that courts are required to construe words and phrases according to their usual, ordinary and every day meaning, the court rejected the surety's challenge, reasoning that by its express language the statute only prohibited the assignment of "claims," not the assignment of "compensation." Supporting this conclusion was the court's analysis of the broader language prohibiting the claims of creditors. In this regard, the court stated:

> Significantly, the second sentence of the statute distinguishes claims and compensation. As pointed out by the circuit court in its thoughtful analysis, had the General Assembly intended to prohibit the assignment of an award or settlement, it could have simply included language expressing such intent. Based on similar facts, the Kentucky Supreme Court reached the same result.
>
> In *Newberg*, the injured employee and his employer entered into a settlement agreement that provided for reimbursement by the Special Fund for amounts determined to be the responsibility of the Fund but paid by the employer pursuant to the terms of the agreement.

9. In *Rapid Settlements LTD's Application for Approval of Structured Settlement Payment Rights v. Symetra Assigned Benefits Service Company*, 133 Wash. Ct. App. 350, 136 P.3d 765 (2006), North Carolina resident Hargette was the beneficiary of a structured settlement in a North Carolina workers' compensation case. To fund the settlement payments, employer/surety purchased an annuity from Symetra Life Insurance Company. The settlement agreement and the annuity contract prohibited Hargette from assigning his right to payment. Time passed, and at some point, Hargette arranged to give up his right to some of his future

periodic payments to Rapid Settlements LTD, in exchange for a lump sum payment. As required by Washington law, Rapid notified Symetra and sought court approval over Symetra's objection.

In addition to arguing that the annuity contract itself prohibited the assignment of the right to periodic payments, Symetra argued that applicable North Carolina Workers' Compensation law also prohibited the assignment by Hargette of his right to receive periodic payments under the annuity contract. In particular, North Carolina law provided:

> No claim for compensation under this Article shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors and from taxes.

To this argument, Rapid responded that by its specific language, the North Carolina Act bars assignment only of "claims for compensation," not the right to payments achieved by the settlement of such claims.

10. The Washington court ruled that the phrase "all compensation and claims therefor" clearly expressed an intention on the part of the North Carolina legislature to distinguish between claims for compensation and compensation itself. Had North Carolina intended to bar assignment of compensation itself, the statute would have been worded differently. For example, North Carolina could have stated the statutory prohibition against assignments as follows, had it wished to prohibit both the assignment of claims and compensation therefor:

> No compensation and no claims for compensation under this article shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors and from taxes.

11. The statutory language at issue in both cases discussed above is similar, but not identical, to the Idaho statutory scheme. In connection with the issue currently before the Industrial Commission, the language of the statute prohibiting the assignment of claims bears

closer examination. Following the 2009 amendment to I.C. § 72-802, the section of the statute dealing with the prohibited assignments reads as follows:

> Compensation not assignable – exempt from execution. No claims for compensation under this law, including compensation payable to a resident of this state under the workers' compensation laws of any other state shall be assignable . . .

12. It is immediately apparent that the non-assignment provisions of I.C. § 72-802, though similar to the statutes at issue in the Kentucky and Washington cases discussed above, contains some significant differences. Against the suggestion that Idaho, too, is among those jurisdictions which distinguish between the assignment of claims and the assignment of compensation, there are two components of the statutory language which suggest otherwise. First, the title of the statute plainly states that "compensation [is] not assignable." Anticipating the need to reconcile this language with the interpretation it promotes, Oasis argues that the title of the statute must be ignored where it conflicts with the unambiguous direction of the body of the statute. In other words, Oasis argues that the title of the statute cannot be used to create an ambiguity where none otherwise exists. Cited in support of this proposition are *Kelso and Irwin, P.A. v. State Insurance Fund*, 134 Idaho 130, 997 P.2d 591 (2000); and *State v. Peterson*, 141 Idaho 473, 111 P.3d 158 (2004). In *Peterson*, the court ruled that although the title is a part of the statute, it may not be used as a means of creating an ambiguity when the body of the act itself is clear. We believe that Oasis has correctly apprehended Idaho's adoption of this general rule of statutory construction. However, as developed below, we also believe that the body of the statute is not without ambiguity, thus making it appropriate to consider the title of the statute, along with the language of the statute, itself, to infer the legislature's intentions.

13. As noted, the statute ostensibly prohibits only the assignment of claims, while protecting both claims and compensation from the claims of creditors. However, it is important

to recognize that in the section of the statute prohibiting the assignment of claims, the 2009 amendment to the statute specifies that this prohibition against the assignment of claims includes "compensation payable" to an Idaho resident under the workers' compensation laws of another state. Had it been the intent of the legislature to narrowly define the word "claim" to mean only the assignment of claimant's chose in action, not to include the proceeds payable as a consequence of the successful prosecution of that claim, then the amendment would have been stated differently, or incorporated elsewhere in the statute. To be consistent with the construction urged upon the Commission by Oasis, the statute could have been written as follows:

> No claims for compensation under this law, including claims for compensation payable to a resident of this state under the workers' compensation laws of any other state . . .

As well, to give effect to the construction urged by Oasis, the 2009 amendment could have been inserted at a different place in the statute:

> No claims for compensation under this law shall be assignable, and all compensation and claims therefor, including compensation payable to a resident of this state under the workers' compensation laws of any other state, shall be exempt from all claims of creditors . . .

14. Instead, the amendment makes it clear that "claims," which term includes compensation payable to an Idaho claimant under the workers' compensation laws of some other state, are not assignable. This structure strongly suggests that the legislature's use of the term "claim" was intended to include not only a prohibition against the assignment of the cause of action, but also a prohibition against the assignment of the proceeds payable to an injured worker as the result of his or her workers' compensation claim.

15. To the extent that the non-assignment language of the statute is deemed ambiguous, we think that the title of the statute, which is not utilized in this context to create an

ambiguity, actually lends further support to the proposition that what the legislature intended was to prohibit both the assignment of claims, and proceeds thereof.

16. This reading of I.C. § 72-802 finds support in the recent case of *Williams v. Blue Cross of Idaho, supra*. Discussing in the legislature's purpose in adopting I.C. § 72-802, the court observed:

> The purpose behind exempting workers' compensation proceeds from the claims of creditors is not to allow the injured worker to recover twice for his or her medical expenses but, rather, to protect the worker and his or her family from the financial difficulties associated with the worker's injury.
>
> > "Workers' compensation awards are intended not to make the worker rich, but to keep an injured worker and the worker's family from becoming destitute because the breadwinner has been injured and cannot work. In order to protect this award and further this policy, workers' compensation statutes typically provide that these awards cannot be attached by creditors. Moreover, they provide that the worker cannot voluntarily assign the proceeds, primarily in order to ensure that injured workers who may have a valid claim but have not yet received the first payments and are desperate for cash do not sell their rights at fire sale prices." *Validity, construction, and effect of statutory exemptions of proceeds of workers' compensation awards*, 48 A.L.R.5th 473 (1997).

Williams v. Blue Cross of Idaho, 260 P.3d at 1193.

17. The Court paraphrased the I.C. § 72-802 prohibitions as follows:

> The plain language of I.C. § 72-802 prohibits (1) a workers' compensation claimant from assigning workers' compensation proceeds to a third party, and (2) a creditor, other than one seeking to recover child support, from asserting a claim against workers' compensation proceeds paid to a claimant.

Although the Court was well aware of the specific language used by the legislature in crafting the provisions of the statute, it nevertheless concluded that the prohibition against assignment extends to the assignment of workers' compensation proceeds, exactly what has been attempted in these cases under the Oasis purchase agreement. We also think it important that the *Williams* Court made a point of emphasizing that I.C. § 72-802 is intended to protect the injured worker

against exactly the type of practice that is at issue in this matter. By its citation to the ALR 5th Article quoted above, the Court has recognized that one of the purposes of I.C. § 72-802 is to ensure that injured workers with valid, yet unrecognized, claims, will not sell their rights at "fire sale prices" in order to keep body and soul together during the pendency of their claim. The Court's explanation of the legislative purpose underline I.C. § 72-802 precisely anticipates the facts of these cases.

18. The assignment at issue was an assignment of an expectancy, or a contingent right to receive workers' compensation benefits. Certainly, at the time of the assignment, these were rights that had not yet ripened to a certainty. However, the assignment of a conditional right to something is well recognized under Idaho law. See, *Simplot v. Western Heritage Insurance Company*, 132 Idaho 582, 977 P.2d 196 (1999); *Fuller v. Callister*, 150 Idaho 848, 252 P.3d 1266 (2011); *Capps v. FIA Card Services*, 149 Idaho 737, 240 P.3d 583 (2010). We see nothing in the facts of this case that makes the Oasis purchase of a contingent right to the proceeds of a workers' compensation claim anything less than an "assignment" of an expectancy, under Idaho law.

19. We are not unmindful of the fact that the prosecution of a contested workers' compensation claim is a sometimes protracted affair. We are aware of the fact that it is not unusual for a typical workers' compensation claimant to be deemed a poor credit risk, unable to access any of the more traditional, and cheaper, forms of credit available in the community. We recognize that whatever else might be said about the cost associated with obtaining money from a legal financing company such as Oasis, these companies fill a need as lenders of last resort who can provide an injured worker with the means to obtain what is absolutely necessary to keep a roof over his head, or put food on the table, until he recognizes something from his workers'

compensation claim. We are loathe to deny the injured workers of this state this last choice, especially when we have nothing to offer Claimant during the pendency of a litigated claim. However, we believe that the Oasis business model, notwithstanding that it is styled as a purchase/sale, nevertheless relies upon an assignment of a contingent right to workers' compensation benefits. We find, therefore, that these assignments are invalid under I.C. § 72-802.

20. Because we have found that a prohibited assignment of Claimants' rights to workers' compensation benefits took place, we do not reach the question of whether or not Oasis is also a creditor who is prohibited from making a claim against compensation, or claims therefor.

21. Although we have found that the Oasis agreements rely upon a prohibited assignment, we also recognize that our ruling has the potential to create a windfall to Gould, Tylinksi and Denny. To prevent unjust enrichment to these Claimants, we believe that where a Claimant's recovery in an underlying workers' compensation case is otherwise sufficient to implicate the requirement to pay the Oasis ownership amount, the equitable solution is to require the injured worker to reimburse Oasis in the amount of the purchase price originally paid by Oasis to the injured worker at the outset of the relationship.

CONCLUSIONS OF LAW AND ORDER

1. The purchase agreement and associated documents executed by Tylinski, Gould and Denny create assignments of an expectancy in the proceeds of their workers' compensation claims, which is prohibited under the provisions of I.C. § 72-802;

However, to prevent unjust enrichment to Tylinksi, Gould and Denny, and to return the parties, as nearly as possible, to the positions they were in prior to the prohibited assignments,

Tylinksi, Gould and Denny shall each reimburse Oasis in the amount of the purchase price paid by Oasis under the terms of the purchase agreements at issue;

2. On the Commission's Notice of Reconsideration of the lump sum settlement at issue in *Gould v. Ormond Builders*, Oasis is directed to repay to Claimant the sum of $3,811.00, representing the difference between the negotiated settlement of the Oasis ownership amount ($7,461.00) and the purchase price originally paid by Oasis ($3,650.00). The subject lump sum settlement agreement is, in all other respects, approved, per the Commission's Order of September 2, 2010;

3. In the matter of *Tylinski v. Guerdon Enterprises, LLC*, and pursuant to the December 9, 2010 Order approving, in part, the lump sum agreement, counsel for Claimant is hereby ordered to release to Claimant the sum of $3,620, representing the difference between the amount retained by Counsel in his client trust account at the direction of the Commission ($5,220.00) and the purchase price paid by Oasis, ($1,600.00). Counsel is directed to release to Oasis the sum of $1,600.00;

4. In the matter of *Denny v. URS*, and pursuant to the Commission's Order approving, in part, Stipulation and Agreement for Lump Sum Settlement filed April 25, 2011, counsel for Claimant is hereby directed to release to Claimant the sum of $2,574.25, representing the difference between the amount retained by Counsel in his client trust account at the direction of the Commission ($7,724.25) and the purchase price paid by Oasis ($5,150.00). Counsel is directed to release the sum of $5,150.00 to Oasis.

5. This order is final and conclusive as to all matters decided herein pursuant to I.C. § 72-718.

IT IS SO ORDERED.

DATED this _13th___ day of ___January_____, 2012.

INDUSTRIAL COMMISSION

_/s/_____
Thomas E. Limbaugh, Chairman

_/s/_____
Thomas P. Baskin, Commissioner

_/s/_____
R.D. Maynard, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _13th____ day of _January_____, 2012, a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON ORDER TO SHOW CAUSE,** was served upon the parties by regular United States Mail upon each of the following:

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CORREGIDOR. In Spanish law. A magistrate who took cognizance of various misdemeanors, and of civil matters. 2 White, New Recop. 53.

CORREL. Lat. In the civil law. Co-stipulators; joint stipulators.

CORREI CREDENDI. In the civil and Scotch law. Joint creditors; creditors *in solido*. Poth. Obl. pt. 2, c. 4, art. 3, § 11.

CORREI DEBENDI. In Scotch law. Two or more persons bound as principal debtors to another. Ersk.Inst. 3, 3, 74.

CORRELATIVE. Having a mutual or reciprocal relation, in such sense that the existence of one necessarily implies the existence of the other. *Father* and *son* are correlative terms. *Claim* and *duty* are correlative terms.

CORRESPONDENCE. Interchange of written communications. The letters written by a person and the answers written by the one to whom they are addressed.

CORROBORATE. To strengthen; to add weight or credibility to a thing by additional and confirming facts or evidence. Lassiteo v. Seaboard Air Line Ry. Co., 171 N.C. 283, 88 S.E. 335, 337; Bradley v. State, 19 Ala.App. 578, 99 So. 321, 322; Holmes v. State, 70 Tex.Cr.R. 423, 157 S.W. 487, 493; State v. Fullerton Lumber Co., 35 S.D. 410, 152 N.W. 708, 715; Kincaid v. State, 131 Tex.Cr. R. 101, 97 S.W.2d 175, 177.

The expression "corroborating circumstances" clearly does not mean facts which, independent of a confession, will warrant a conviction; for then the verdict would stand not on the confession, but upon those independent circumstances. To corroborate is to strengthen, to confirm by additional security; to add strength. The testimony of a witness is said to be corroborated when it is shown to correspond with the representation of some other witness, or to comport with some facts otherwise known or established. Corroborating circumstances, then, used in reference to a confession, are such as serve to strengthen it, to render it more probable; such, in short, as may serve to impress a jury with a belief in its truth. State v. Guild, 10 N.J.Law, 163, 18 Am.Dec. 404.

CORROBORATING EVIDENCE. Evidence supplementary to that already given and tending to strengthen or confirm it; additional evidence of a different character to the same point. In re Cardoner's Estate, 27 N.M. 105, 196 P. 327, 328; State v. Smith, 75 Mont. 22, 241 P. 522, 523; People v. Follette, 74 Cal.App. 178, 240 P. 502, 519; Radcliffe v. Chavez, 15 N.M. 258, 110 P. 699, 701.

CORROBORATIVE EVIDENCE. See Corroborating Evidence.

CORRUPT. Spoiled; tainted; vitiated; depraved; debased. Webster.

CORRUPT INTENT. A "corrupt intent," as an 2d 423, 425, which only requires intent to receive more than the law permits for forbearance of money, but does not require that taker knows that he is violating usury law.

CORRUPT PRACTICES ACT. The Act of June 25, 1910, c. 392, 36 Stat. 822, which, like the English act of 1883 and supplements, dealt with "corrupt and illegal practices" in connection with elections, and which was repealed by the "Federal Corrupt Practices Act" of Feb. 28, 1925, c. 368, Title III, 2 U.S.C.A. § 241 et seq.

CORRUPTIO OPTIMI EST PESSIMA. Corruption of the best is worst. Jacobs v. Beecham, 221 U.S. 263, 31 S.Ct. 555, 55 L.Ed. 729.

CORRUPTION. Illegality; a vicious and fraudulent intention to evade the prohibitions of the law; something against or forbidden by law; moral turpitude or exactly opposite of honesty involving intentional disregard of law from improper motives. State v. Barnett, 60 Okl.Cr. 355, 69 P.2d 77, 87.

An act done with an intent to give some advantage inconsistent with official duty and the rights of others. Johnson v. U. S., C.C.A.Alaska, 260 F. 783, 786.

The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. U. S. v. Johnson, C.C.Ga., 26 F. 682; Worsham v. Murchison, 66 Ga. 719; U. S. v. Edwards, C.C.Ala., 43 F. 67.

CORRUPTION OF BLOOD. In English law. The consequence of *attainder*, being that the attainted person could neither inherit lands or other hereditaments from his ancestor, nor retain those he already had, nor transmit them by descent to any heir, because his blood was considered in law to be corrupted. Avery v. Everett, 110 N.Y. 317, 18 N.E. 148, 1 L.R.A. 264; 1 Steph.Comm. 446. This was abolished by St. 3 & 4 Wm. IV. c. 106, and 33 & 34 Vict. c. 23, and is unknown in America. Const.U.S. art. 3, § 3.

CORRUPTLY. When used in a statute, this term generally imports a wrongful design to acquire some pecuniary or other advantage. Grebe v. State, 112 Neb. 715, 201 N.W. 143, 144; Bosselman v. U. S., C.C.A.N.Y., 239 F. 82, 86; State v. Shipman, 202 N.C. 518, 163 S.E. 657.

CORSELET. Ancient armor which covered the body.

CORSE-PRESENT. In old English law. A mortuary, thus termed because, when a mortuary became due on the death of a man, the best or second-best beast was, according to custom, offered or presented to the priest, and carried with the corpse. In Wales a corse-present was due upon

which the
precation.
nounced in
it was cons
Eng.Law, 3
345; Spelm

CORTES.
the parliam

CORTEX.
of anything.

CORTIS. A

CORTULARIUM, or CORTARIUM
ords. A yard adjoining a countr

CORVÉE. In French law. Gratu
acted from the villages or commun
for repairing roads, constructing
State v. Covington, 125 N.C. 641, 3

CORVÉE SEIGNEURIALE. Servi
of the manor. Guyot, *Rép.Univ.*;

COSA JUZGADA. In Spanish la
matter adjudged, (*res judicata.*)
Recop. b. 3, tit. 8, note.

COSAS COMUNES. In Spanish la
responding to the *res communes*,
law, and descriptive of such thin
to the equal and common enjoym
sons and not to be reduced to pri
such as the air, the sea, and the w
streams. Hall, Mex.Law, 447; I
69 Cal. 255, 10 P. 707.

COSBERING. See Coshering.

COSDUNA. In feudal law. A cu

COSEN, COZEN. In old English
"A cosening knave." 3 Leon. 171.

COSENAGE. (Also spelled "Cosi
age.") In old English law. A w
the heir where the *tresail, i. e.*, th
besail, or great-grandfather, was
in fee at his death, and a strange
the land and abated. Fitzh.Nat.B
Comm. *186.

Kindred; cousinship; relatio
Stat. 4 Hen. III. cap. 8; 3 Bla.C
Litt. 160a.

COSENING. In old English la
mentioned in the old books, wher
done deceitfully, whether belongi
or not, which could not be prop
any special name. The same as
of the civil law. Cowell; West.Sy
ment, § 68; Blount; 4 Bla.Comm.

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Disability Benefits

SSA Publication No. 05-10029, June 2012, ICN 456000

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Disability benefits

Disability is something most people do not like to think about. But the chances that you will become disabled probably are greater than you realize. Studies show that a 20-year-old worker has a 3 in 10 chance of becoming disabled before reaching full retirement age.

This booklet provides basic information on Social Security disability benefits and is not intended to answer all questions. For specific information about your situation, you should talk with a Social Security representative.

We pay disability benefits through two programs: the Social Security disability insurance program and the Supplemental Security Income (SSI) program. This booklet is about the Social Security disability program. For information about the SSI disability program for adults, see *Supplemental Security Income* (SSI) (Publication No. 05-11000). For information about disability programs for children, refer to *Benefits For Children With Disabilities* (Publication No. 05-10026). Our publications are available at Get A Publication.

Who can get Social Security disability benefits?

Social Security pays benefits to people who cannot work because they have a medical condition that is expected to last at least one year or result in death. Federal law requires this very strict definition of disability. While some programs give money to people with partial disability or short-term disability, Social Security does not.

Certain family members of disabled workers also can receive money from Social Security. This is explained in "Can my family get benefits?"

How Do I Meet The Earnings Requirement For Disability Benefits?

In general, to get disability benefits, you must meet two different earnings tests:

1. A "recent work" test based on your age at the time you became disabled; and
2. A "duration of work" test to show that you worked long enough under Social Security.

Certain blind workers have to meet only the "duration of work" test.

The table below, shows the rules for how much work you need for the "recent work" test based on your age when your disability began. The rules in this table are based on the ***calendar quarter*** in which you turned or will turn a certain age.

The calendar quarters are:

First Quarter: January 1 through March 31
Second Quarter: April 1 through June 30
Third Quarter: July 1 through September 30; and
Fourth Quarter: October 1 through December 31

Rules for work needed for the "recent work test"	
If you become disabled ...	***Then you generally need:***
In or before the quarter you turn age 24	1.5 years of work during the three-year period ending with the quarter your disability began.
In the quarter after you turn age 24 but before the quarter you turn age 31	Work during half the time for the period beginning with the quarter after you turned 21 and ending with the quarter you became disabled. Example: If you become disabled in the quarter you turned age 27, then you would need three years of work out of the six-year period ending with the quarter you became disabled.
In the quarter you turn age 31 or later	Work during five years out of the 10-year period ending with the quarter your disability began.

Idaho Workers' Compensation Benefits Table

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
AVERAGE STATE WAGE (ASW)	456.00	471.00	495.00	526.00	527.00	534.00	543.00	565.00	584.00	618.00	636.00	643.00	646.00	661.00
55% ASW (PPI)	**250.80**	**259.05**	**272.25**	**289.30**	**289.85**	**293.70**	**298.65**	**310.75**	**321.20**	**339.90**	**349.80**	**353.65**	**355.30**	**363.55**
MINIMUM 45% ASW (unless over 90% AWW)	**205.20**	**211.95**	**222.75**	**236.70**	**237.15**	**240.30**	**244.35**	**254.25**	**262.80**	**278.10**	**286.20**	**289.35**	**290.70**	**297.45**
45% INCREASE	5.85	6.75	10.80	13.95	0.45	3.15	4.05	9.90	8.55	15.30	8.10	3.15	1.35	6.75
60% ASW	**273.60**	**282.60**	**297.00**	**315.60**	**316.20**	**320.40**	**325.80**	**339.00**	**350.40**	**370.80**	**381.60**	**385.80**	**387.60**	**396.60**
- Increase from Last Year	7.80	9.00	14.40	18.60	0.60	4.20	5.40	13.20	11.40	20.40	10.80	4.20	1.80	9.00
67% ASW	**305.52**	**315.57**	**331.65**	**352.42**	**353.09**	**357.78**	**363.81**	**378.55**	**391.28**	**414.06**	**426.12**	**430.81**	**432.82**	**442.87**
- Increase from Last Year	8.71	10.05	16.08	20.77	0.67	4.69	6.03	14.74	12.73	22.78	12.06	4.69	2.01	10.05
90% ASW MAXIMUM	**410.40**	**423.90**	**445.50**	**473.40**	**474.30**	**480.60**	**488.70**	**508.50**	**525.60**	**556.20**	**572.40**	**578.70**	**581.40**	**594.90**
- Increase from Last Year	11.70	13.50	21.60	27.90	0.90	6.30	8.10	19.80	17.10	30.60	16.20	6.30	2.70	13.50
15% ASW MINIMUM*	**68.40**	**70.65**	**74.25**	**78.90**	**79.05**	**80.10**	**81.45**	**84.75**	**87.60**	**92.70**	**95.40**	**96.45**	**96.90**	**99.15**
-Increase from Last Year	1.95	2.25	3.60	4.65	0.15	1.05	1.35	3.30	2.85	5.10	2.70	1.05	0.45	2.25

AVERAGE WEEKLY WAGE (AWW)

.142857 - 1 day .428571-3 days .714285-5 days
.285714 - 2 dys .571428-4 days .857142-6 days

To determine weekly wage for monthly salary:
.23077 x monthly wage = weekly wage

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Actuarial Life Table

Office of the Chief Actuary

Life Tables

A period life table is based on the mortality experience of a population during a relatively short period of time. Here we present the 2007 period life table for the Social Security area population. For this table, the period life expectancy at a given age represents the average number of years of life remaining if a group of persons at that age were to experience the mortality rates for 2007 over the course of their remaining life.

Period Life Table, 2007

Exact age	Male			Female		
	Death probability [a]	Number of lives [b]	Life expectancy	Death probability [a]	Number of lives [b]	Life expectancy
0	0.007379	100,000	75.38	0.006096	100,000	80.43
1	0.000494	99,262	74.94	0.000434	99,390	79.92
2	0.000317	99,213	73.98	0.000256	99,347	78.95
3	0.000241	99,182	73.00	0.000192	99,322	77.97
4	0.000200	99,158	72.02	0.000148	99,303	76.99
5	0.000179	99,138	71.03	0.000136	99,288	76.00
6	0.000166	99,120	70.04	0.000128	99,275	75.01
7	0.000152	99,104	69.05	0.000122	99,262	74.02
8	0.000133	99,089	68.06	0.000115	99,250	73.03
9	0.000108	99,075	67.07	0.000106	99,238	72.04
10	0.000089	99,065	66.08	0.000100	99,228	71.04
11	0.000094	99,056	65.09	0.000102	99,218	70.05
12	0.000145	99,047	64.09	0.000120	99,208	69.06
13	0.000252	99,032	63.10	0.000157	99,196	68.07
14	0.000401	99,007	62.12	0.000209	99,180	67.08
15	0.000563	98,968	61.14	0.000267	99,160	66.09
16	0.000719	98,912	60.18	0.000323	99,133	65.11
17	0.000873	98,841	59.22	0.000369	99,101	64.13
18	0.001017	98,754	58.27	0.000401	99,064	63.15
19	0.001148	98,654	57.33	0.000422	99,025	62.18
20	0.001285	98,541	56.40	0.000441	98,983	61.20
21	0.001412	98,414	55.47	0.000463	98,939	60.23
22	0.001493	98,275	54.54	0.000483	98,894	59.26
23	0.001513	98,128	53.63	0.000499	98,846	58.29
24	0.001487	97,980	52.71	0.000513	98,796	57.32
25	0.001446	97,834	51.78	0.000528	98,746	56.35
26	0.001412	97,693	50.86	0.000544	98,694	55.38
27	0.001389	97,555	49.93	0.000563	98,640	54.40
28	0.001388	97,419	49.00	0.000585	98,584	53.44
29	0.001405	97,284	48.07	0.000612	98,527	52.47
30	0.001428	97,147	47.13	0.000642	98,466	51.50
31	0.001453	97,009	46.20	0.000678	98,403	50.53
32	0.001487	96,868	45.27	0.000721	98,336	49.56
33	0.001529	96,724	44.33	0.000771	98,266	48.60
34	0.001584	96,576	43.40	0.000830	98,190	47.64

Exact age	Male			Female		
	Death probability [a]	Number of lives [b]	Life expectancy	Death probability [a]	Number of lives [b]	Life expectancy
35	0.001651	96,423	42.47	0.000896	98,108	46.68
36	0.001737	96,264	41.54	0.000971	98,020	45.72
37	0.001845	96,096	40.61	0.001056	97,925	44.76
38	0.001979	95,919	39.68	0.001153	97,822	43.81
39	0.002140	95,729	38.76	0.001260	97,709	42.86
40	0.002323	95,525	37.84	0.001377	97,586	41.91
41	0.002526	95,303	36.93	0.001506	97,452	40.97
42	0.002750	95,062	36.02	0.001650	97,305	40.03
43	0.002993	94,800	35.12	0.001810	97,144	39.10
44	0.003257	94,517	34.22	0.001985	96,968	38.17
45	0.003543	94,209	33.33	0.002174	96,776	37.24
46	0.003856	93,875	32.45	0.002375	96,566	36.32
47	0.004208	93,513	31.57	0.002582	96,336	35.41
48	0.004603	93,120	30.71	0.002794	96,087	34.50
49	0.005037	92,691	29.84	0.003012	95,819	33.59
50	0.005512	92,224	28.99	0.003255	95,530	32.69
51	0.006008	91,716	28.15	0.003517	95,219	31.80
52	0.006500	91,165	27.32	0.003782	94,885	30.91
53	0.006977	90,572	26.49	0.004045	94,526	30.02
54	0.007456	89,940	25.68	0.004318	94,143	29.14
55	0.007975	89,270	24.87	0.004619	93,737	28.27
56	0.008551	88,558	24.06	0.004965	93,304	27.40
57	0.009174	87,800	23.26	0.005366	92,841	26.53
58	0.009848	86,995	22.48	0.005830	92,342	25.67
59	0.010584	86,138	21.69	0.006358	91,804	24.82
60	0.011407	85,227	20.92	0.006961	91,220	23.97
61	0.012315	84,254	20.16	0.007624	90,585	23.14
62	0.013289	83,217	19.40	0.008322	89,895	22.31
63	0.014326	82,111	18.66	0.009046	89,147	21.49
64	0.015453	80,935	17.92	0.009822	88,340	20.69
65	0.016723	79,684	17.19	0.010698	87,473	19.89
66	0.018154	78,351	16.48	0.011702	86,537	19.10
67	0.019732	76,929	15.77	0.012832	85,524	18.32
68	0.021468	75,411	15.08	0.014103	84,427	17.55
69	0.023387	73,792	14.40	0.015526	83,236	16.79
70	0.025579	72,066	13.73	0.017163	81,944	16.05
71	0.028032	70,223	13.08	0.018987	80,537	15.32
72	0.030665	68,254	12.44	0.020922	79,008	14.61
73	0.033467	66,161	11.82	0.022951	77,355	13.91
74	0.036519	63,947	11.21	0.025147	75,580	13.22
75	0.040010	61,612	10.62	0.027709	73,679	12.55
76	0.043987	59,147	10.04	0.030659	71,638	11.90
77	0.048359	56,545	9.48	0.033861	69,441	11.26
78	0.053140	53,811	8.94	0.037311	67,090	10.63
79	0.058434	50,951	8.41	0.041132	64,587	10.03
80	0.064457	47,974	7.90	0.045561	61,930	9.43
81	0.071259	44,882	7.41	0.050698	59,109	8.86
82	0.078741	41,683	6.94	0.056486	56,112	8.31

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RULE 3.

PLEADINGS

A. Complaint and Answer.

1. For purposes of these rules, an "application for hearing" as referenced in Idaho Code § 72-706 shall be called a complaint. The complaint shall be in the form prescribed by the Commission, a sample of which is attached hereto as Appendix 1. A complaint delivered by facsimile transmission (fax) to the Commission before midnight Mountain Time shall be considered filed on that date.

2. The answer to such complaint shall be in the form prescribed by the Commission, a sample of which is attached hereto as Appendix 3.

B. Separate Complaints.

1. **Consolidation** - A separate complaint shall be filed for each alleged accident or occupational disease for which workers' compensation benefits are claimed. Separate pleadings shall be filed in each case in which a complaint has been filed; provided, however, that a single pleading may be filed in two or more cases which have been consolidated. No cases shall be consolidated except by order of the Commission, and the Commission will not consider consolidation of cases unless a separate complaint has been filed in each and every case sought to be consolidated.

C. Industrial Special Indemnity Fund.

Any claim against the Industrial Special Indemnity Fund (ISIF) shall be made by filing a separate complaint in accordance with Idaho Code, § 72-334 and shall be in the form prescribed by the Commission, a sample of which is attached hereto as Appendix 2. All complaints against the ISIF shall be filed with the Commission and a copy shall be served on all other parties.

D. Certifying Pleadings, Motions or Other Papers.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one licensed attorney of record of the State of Idaho, in the attorney's individual name. A party who is not represented by an attorney shall sign the pleading, motion, or other paper. The signature of any party to an action, or the party's attorney, shall constitute a certification that said party, or the party's attorney, has read the pleading, motion, or other paper; that to the best of his or her knowledge, information and belief after reasonable inquiry there are sufficient grounds to support it; and that it is not submitted for delay or any other improper purpose.

E. Motions Generally.

1. An application to the Commission for an order shall be made by filing a motion which, unless made during a hearing, shall be made in writing, state the legal and factual basis for the motion, and set forth the relief or order sought.

2. If after 14 days from the filing of a motion, no brief, affidavit, or other response is filed, the Commission may act on the motion. The Commission may act on the motion sooner after giving actual notice, or attempting to give actual notice by telephone or by facsimile transmission, to all parties. If the motion is opposed by any party, the Commission may base its ruling on written argument or may conduct such conference or hearing as may be necessary, in the Commission's judgment, to rule on the motion.

3. All motions and other pleadings shall be served on any other party.

F. Motions to Reconsider.

A motion to reconsider pursuant to Idaho Code § 72-718 shall be made[1] within 20 days from the date the final decision is filed and shall be supported by a brief filed with the motion. All responses to a motion to reconsider shall be filed within 14 days of the date of filing of the motion. Any reply brief shall be filed no later than 10 days from the date of filing the response.

G. Form and Size Requirements for Filed Documents.

All pleadings, letters, petitions, briefs, notices and other documents filed with the Commission shall be on 8 1/2" x 11" paper.

COMMENT: Subsection E.2. A response to a motion now allows 14 days instead of 10 to accommodate delivery and review of the material before preparation of a responsive filing.

*COMMENT RE: **Complaint** - The necessity to sign the release by claimant is not jurisdictional to filing the complaint. The use of this form is intended for ease in receiving medical information by Employer/Surety. Should claimant refuse to release such medical information, serious consequences may develop in continuing the claim for benefits.*

[1] Amended March 1, 2008